THE HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

THE HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

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WRIT PETITION NO. 7110 of 2005

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Between:

M/s SJK Steel Plant Ltd. Represented by its Managing Director Y. Jithin Kumar

….Petitioner

A N D

Government of India represented by Secretary, Ministry of Finance, Department of Revenue, New Delhi and Others …Respondents

Advocate for Petitioner: Sri Vedula Venkataramana

Advocate for Respondents: Sri A. Rajasekhar Reddy

Assistant Solicitor General

February 14, 2006

JUDGMENT

Per G.S. Singhvi, CJ

This is another round of litigation by the petitioner, who has so far failed to persuade the Central Board of Excise and Customs (for short 'the Board') to exercise power under proviso to Section 61 (2) of the Customs Act, 1961 (for short 'the Act') in its favour.

Petitioner imported certain machinery and equipment for setting up of an integrated steel plant at Tadipatri, Anantapur District. The machinery of the petitioner was kept in the private licensed bonded warehouse. Some of the machinery was cleared on payment of customs duty and interest payable thereon, but the remaining machinery was not removed from the bonded warehouse till June, 2001. After moving out the machinery from the bonded warehouse, the petitioner made an application to the Board for waiver of interest amounting to Rs.4.11 crores. The same was rejected on the ground that there was no special reason to waive the interest.

The petitioner challenged the decision of the Board in writ petition No. 5635 of 2004. By an order dated August 23, 2004, the Division Bench of this Court allowed the Writ Petition and directed the Board to reconsider the application of the petitioner for waiver of interest. The relevant extracts of that order read as under:

> "Section 61 (2) read with proviso, makes it clear that the authorities have to pass a reasoned order while accepting or rejecting the application moved for waiver. Besides, we are told that respondents 4 and 5 had twice recommended the case of the petitioner to the Board for waiver in the special circumstances mentioned by him. Since, the respondent-Board is required to discharge a quasi-judicial function, the least expected of such an authority is to give reasons for the conclusions it arrives at and for its decision in an application.
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> Since the reasons have not been forthcoming and as a matter of fact even the Board's order has not been placed before us, although, specifically the learned counsel for the respondents was asked to place the order of the Board, if any, before us, yet he came with the orders mentioned herein above and submitted that these are the only orders passed by the Board and issued by Under Secretary to the Government of India or O.S.D. Customs, in these circumstances, we have no option, but to allow this writ petition and remand the case back to the Board. The Board shall consider the application of the petitioner on merit and pass an order after giving reasons. No order as to costs."

The Board once again rejected the petitioner's plea for waiver of interest. The same was conveyed to the petitioner by Superintendent, Central Excise and Customs, Tadpatri Range vide his letter dated March 3, 2005. The substantive part of the Board's decision reads as under:

> "In pursuance of Honourable High Court of Andhra Pradesh's Order dated 23-08-2004 on the subject cited above, the request of petitioner (i.e. M/s SJK Steel Corpn. Ltd.,Hyderabad) has been re-examined in the Board (Central Board of Excise and Customs). However, it is regretted that it has not been found possible for the Board to accede to the request as the reasons/grounds advanced by petitioner in support of their request for waiver of interest have not been found to be of exceptional nature and in public interest though the goods imported by the petitioner are plant and machinery imported for integrated Steel Plant and have been found covered under the guidelines contained in Board's Letter F.No. 475/82/92-LC, dated 27-12-93. Further, these goods do not seem to be of classified goods, which are exempt from payment of interest. A similar request of M/s Jindal Vijaynagar Steel Ltd., Bellory, who had imported plant and machinery for setting up an integrated

steel plant, was also not acceded by the Board."

The petitioner has challenged the aforementioned decision mainly on the ground that the same is contrary to order dated August 23, 2004 passed in writ petition No. 5635 of 2004. It has averred that as per the direction given by the Court, the Board was required to pass a reasoned order, which it has failed to do and, therefore, the decision contained vide letter dated March 8, 2005 should be quashed.

In the counter-affidavit filed on behalf of the respondents in the form of affidavit of Sri P.N.Vittal Dass, Commissioner of Customs and Central Excise, Tirupati it has been averred that demand of interest was created because the petitioner did not pay the balance amount of special additional duty. It has been further averred that interest can be waived only under exceptional circumstances and on re-examination of the petitioner's claim, it was found that there do not exist circumstances of exceptional nature warranting exercise of power under proviso to Section 61 (2) of the Act.

We have heard learned counsel for the parties and perused the record including the file produced by the Assistant Solicitor General.

Section 61 (2) of the Act together with its provisos, which have bearing on the decision of the writ petition reads as under:

"(2) Where any warehoused goods---

i. specified in (sub-clause (a) or sub-clause (aa)) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

ii. specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of (ninety days), interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry

of the said (ninety days) till the date of payment of duty on the warehoused goods.

PROVIDED that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods.

PROVIDED FURTHER that the Board may, if it is satisfied that it is necessary so to do in the public interest by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

An analysis of the above reproduced provisos shows that if the warehoused goods specified in sub-clause (1) or sub-clause (aa) of sub-section (1) of Section 61 remain in a warehouse beyond the specified period, interest at the rate specified in section 47 is payable on the amount of duty. If the warehoused goods specified in sub-clause (b) of sub-section (1) remain in a warehouse beyond a period of ninety days, then interest is payable at the rate not exceeding the rate specified in Section 47, as may be fixed by the Board. First proviso to Section 61 (2) empowers the Board to waive the whole or part of interest payable under that section in respect of any warehoused goods. The exercise of this power hedged with the condition that the Board must feel satisfied about the existence of the circumstances of exceptional nature and also that it will be in public interest to waive the interest. Then and then only the Board can waive the interest or any part thereof.

The learned Assistant Solicitor General argued that reasons are required to be recorded only if the Board decides to waive the interest and not otherwise and, therefore, the absence of reasons should not be made a ground to nullify the decision which was conveyed to the petitioner vide letter dated March 8, 2005. There appears some merit in the submission of the learned Assistant Solicitor General, but we are unable to accept the same because while deciding the writ petition No. 5635 of 2004 filed by the petitioner, a coordinate Bench had ruled that the Board is required to record reasons for accepting or rejecting the request for waiver of interest.

We may now advert to the decision of the Board. At the out set, we consider it proper to record our appreciation that the functionaries of the Board have not acted on the recommendations made by the political functionaries supporting the petitioner's prayer for waiver of interest and tried to demonstrate that they can act

independently. However, at the same time, we are constrained to observe that the Board has failed to direct its attention to the ground set out in the representation made by the petitioner in support of its prayer for waiver of interest and decided the same simply by using stock expression used in the statute. The notings recorded in the files produced by learned Assistant Solicitor General, show that the Members of Board have simply appended their signatures on the notings prepared by an official, who referred to the representations of the petitioner, but did not indicate the reasons for not accepting the same. In our opinion, the Board was duty bound to objectively consider the factors enumerated in the representation made on behalf of the petitioner and then decide whether or not it would be in public interest to waive the interest by taking into consideration the special circumstances, if any brought forward by the petitioner. The use of the expression "the reasons/grounds advanced by the petitioner are not found to be of exceptional nature and are not in public interest deserving favourable consideration of waiver of interest under Section 61 of the Act" in the impugned decision of the Board, is clearly indicative of the non-application of mind by the functionaries of the Board. Therefore, the same is liable to be quashed on the ground that it is not in consonance with the direction given by the Court on August 23, 2004 and the rules of natural justice.

In the result, writ petition is allowed. The rejection of the petitioner's prayer for waiver of interest, which was conveyed to it vide letter dated March 11, 2005 sent by respondent No.5 is quashed. The Board shall reconsider the petitioner's request for waiver of interest in terms of first proviso to Section 61 (2) of the Act and pass a reasoned order within a period of two months from the date of receipt of a copy of this order. While doing so, the Board shall not be influenced either by the recommendations made by any political functionary in favour of the petitioner or the fact that the petitioner has twice approached the Court. The concerned functionaries should take into consideration the grounds set out in the representation of the petitioner, hear the representative of the petitioner, if considered necessary, and then pass a reasoned order for accepting or rejecting application for waiver of interest.

Before parting with the case, we deem it proper to observe that the order

dated August 23, 2004 passed in Writ Petition No. 5635 of 2004 and this order shall not be considered as a precedent for correct interpretation of first proviso to Section 61(2) of the Act and it will be open to the respondents to contend in any future proceedings that the Board is not required to record the reasons for refusing to entertain the prayer for waiver of interest.

G.S.SINGHVI, C.J.

G.BHAVANI PRSAD, J.

February 14, 2006

CHV/GRR/vtv